

FILED IN OPEN COURT  
ON 8/16/2014  
Julie A. Richards, Clerk  
US District Court  
Eastern District of NC

Respondent .

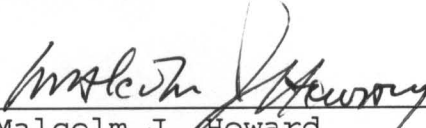
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Petitioner began a period of supervised release on July 9, 2009. A motion to revoke his supervised release was filed on January 13, 2012 [DE #23]. Petitioner is currently in custody pending a hearing on his alleged supervised release violation.

The court, having reviewed the record, agrees with the parties' assessment that petitioner's motion is meritorious. Under Simmons' definition of a felony offense, petitioner's prior North Carolina convictions are not felonies for the purposes of § 922(g)(1) because petitioner could not have been imprisoned for more than one year for these offenses. As petitioner's exposure for his prior convictions did not exceed one year, petitioner is factually innocent of the federal crime of being a felon in possession of a firearm in violation of § 922(g)(1).<sup>1</sup> Therefore, petitioner's motion to vacate [DE #41] is granted, and this court's judgment entered February 15, 2006 is hereby vacated. The pending motion to revoke petitioner's supervised release is deemed moot. The court ORDERS that petitioner be discharged forthwith from the custody of the Federal Bureau of Prisons.

This 16<sup>th</sup> day of August 2012.

  
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Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
#26

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<sup>1</sup>Inasmuch as any affirmative defense of the statute of limitations exists in this matter, the government explicitly waives said defense. (See Gov't Answer ¶ 4.)